GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

TRIBAL WELFARE DEPARTMENT – LTR – Revision Petition filed by Sri Alapati Pedda Somaraju S/o Krishnamma against the orders of the Appellate Authority and Project Officer, ITDA, K.R. Puram, West Godavari District in S.R.A.No.32/2017, dt.02.03.2019 to the land adm. Ac.2.00 Cts in R.S.No.120 of Laxmudugudem (V), Buttaigudem (M), West Godavari District – Dismissed – Orders – Issued.

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SOCIAL WELFARE (TW.LTR.I) DEPARTMENT

G.O.MS.No.70 **Dated:14.11.2023**

Read the following:-

1. Revision Petition filed by Sri Alapati Pedda Somaraju S/o. Krishnamma, Kommugudem Village, H/o Laxmudugudem Gram Panchayat, Buttaigudem (M), West Godavari District, dated: 01.04.2019 along with its enclosures.
2. From the Project officer, ITDA, K.R.Puram, S.R.A.No.32/2023, dated:24.07.2023.

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ORDER:

In reference 1st read above, Sri Alapati Pedda Somaraju S/o Krishnamma, Laxmudugudem (V), Buttaigudem (M), West Godavari District have filed a Revision Petition before the Government of Andhra Pradesh, against the orders of the Appellate Authority cum Project Officer, ITDA, K.R.Puram, West Godavari District in S.R.A.No.32/2017, dt.02.03.2019 to the land adm. Ac.2.00 Cts in R.S.No.120 of Laxmudugudem (V), Buttaigudem (M), West Godavari District.

2. Brief history of the subject case:

a) Smt. Tellam Ganga W/o Sriramu R/o. Seethappagudem (V), Buttaigudem (M) has filed a complaint under Section 3(2)(a) of the APSALTR 1/59 as amended by regulation by 1/70 stating that an extent of Ac. 2.00 cts in R.S. No.120 situated at Laxmudugudem (V) Buttaigudem (M). After due enquiry, the Special Deputy Collector (TW), K.R.Puram allowed the petition of Smt. Tellam Ganga W/o Sriramu R/o. Seethappagudem (V), Buttaigudem (M) and directed the Tahsilder, Buttaigudem (M), in S.R. No.23/2015, dt.16.05.2017 and Sri Alapati

(P.T.O)

Pedda Somaraju S/o. Krishnamma has also filed a W.P.No.23027/2017 in Hon'ble High Court and the Hon'ble High Court ordered that directing the Special Deputy Collector (TW) to dispose of the stay petition or appeal with in a period of four weeks till than status quo shall be maintend.

b) Aggrieved the orders of Special Deputy Collector (TW), K.R.Puram in SR No.23/2015 Sri Alapati Pedda Somaraju S/o. Krishnamma has filed an appeal before the Appellate Authority and Project Officer, ITDA, K.R.Puram, West Godavari District.

c) After examined all the documentary evidence available on record and perused the above said orders of the Special Deputy Collector (TW), K.R.Puram passed in S.R.No.23/2015, dt.16.05.2017 verification of the records and available material, the Appellate Authority and Project Officer, ITDA, K.R.Puram, West Godavari District in S.R.A. No.32/2017 has opined the appellant could not prove his ownership on the appeal schedule property and the lower court has correctly passed orders dt.16.05.2017 in S.R.No.23/2015 the appeal is dismissed.

3. Aggrieved by the above orders, the Revision Petitioner, Sri Alapati Pedda Somaraju S/o. Krishnamma filed a Revision Petition before the Government and requested to allow the revision and set-a-side the order passed in S.R.A.No.32/2017, Dt:02-03-2019 in which Appellate Authority and Project Officer, ITDA, K.R.Puram, West Godavari District confirmed the order passed in S.R.No.23/2015 Dt:16.05.2017 on the file of the Special Deputy Collector (T.W.) K.R.Puram and pass such further order or orders as are necessary in the interest of justice.

4. In this connection, the Project Officer, ITDA, K.R. Puram cum the Additional Agent to the Government was requested to furnish the detailed Para-wise remarks and connected records in the subject case so as to dispose of the Revision Petition at Government level. In reply to the above, the Project Officer, ITDA, K.R Puram, in his letter dt.24.07.2023 has submitted the para-wise remarks on the affidavit filed by the Petitioner.

5. The matter came for hearing finally before the Revision Authority on 26.08.2023. Inspite of several notices, the Revision Petitioner did not attend the court. The following order is made after perusal of the material documents available on the record and Revision Petition filed and on merits of the case.

a) The case of the Revision Petitioner is that the land in question was purchased by the father of the Petitioner from one Kosuri Kanthamma W/o. Ramaiah who is non-tribe through a possessory agreement of sale dated:20.03.1969 i.e., prior to the commencement of Andhra Pradesh Scheduled Area Land Transfer Regulation and the authorities have no jurisdiction to test the transfers effected in respect of the immovable properties in agency area prior to 03.02.1970 because the Andhra Pradesh Schedule Area Land Transfer Regulation came into force w.e.f.03.02.1970 which is prospective in nature as per the ruling of the Hon'ble Supreme Court of India reported in AIR 1994 page 226 and the authorities failed to conduct proper enquiry and finally requested to set-aside the impugned order.

b) The Additional Agent to Government passed the impugned order observing that admittedly a possessory Sale Agreement dated:20-03-1969 was executed by Sri Kossuri Kanthamma W/o Sriramayya in favour of Sri Alapati Krishnamma S/o Somanna in relation to the subject land and no registered sale deed was registered in pursuance of the said possessory sale agreement as such the unregistered sale agreement is not admissible in evidence and the appellant/ revision petitioner could not prove his ownership over the land in question and up held the order of the Special Deputy Collector, Tribal Welfare.

The background of cases and rival submissions give rise to following points for consideration:

c) Whether the claim of the Revision Petitioner on the basis of an un registered sale agreement in 1969 in respect of the Revision Petition lands is valid or whether the occupation and possession of such lands is violative of the provisions of the Andhra Pradesh Scheduled Area Land Transfer Regulations of 1 of 59 as amended by 1 of 70.

d) The Clause (b) of Section 3(1) which was substituted by Regulation 1 of 1970 raised a presumption that the property situated in the Agency Tracts in possession of a non-tribal shall be presumed to have been acquired by such a person or his predecessor-in-possession through a transfer made to him by a member of Schedule Tribe. The transfer of lands situated in the scheduled area in favor of non tribals is prohibited under the Land Transfer Regulations 1 of 70.

e) The records reveal that the father of the petitioner purchased the land in question through a possessory agreement of sale dt.20.03.1969 from one Smt. Kossuri Kanthamma W/o Ramayya (Non-Tribe), that the Kossuri people acquired the land prior to 1933 by virtue of registered partition deed dt:05-12-1957 effected among the Kossuri family that the family was allotted to Smt. Kossuri Kanthamma. The records further show that the claimant is not in the occupation of the land as per the un registered sale deed and the Adangal of the year 1971 shows the name of Sri Kossuri Bhaskara Rao as enjoyer.

f) There is no doubt that the Land Transfer Regulations 1 of 59 as amended by 1 of 70 is prospective in nature but not in retrospective. But the point here is that whether the claimant has been in possession and enjoyment of the land in question from the date of the un registered sale agreement to the date on which the LTR 1 of 70 came in to force i.e., 03-02-1970 which prohibits the transfer of lands between non tribals also in the scheduled area. There is no evidence produced by the non tribal Revision Petitioner in respect of this aspect. In such case what is the validity of such un registered sale agreement said to have been effected in the year 1969.

g) The land transfers effected through an unregistered sale agreement is not valid in the light of the judgment made in Banguru Ramatulasamma Vs. Yada Mastan Reddy dt:10-08-1998 (1998 (5) ALD 502,) where in the Hon'ble High Court of Andhra Pradesh held that an un stamped and un registered sale agreements cannot be taken as an evidence of proof under section 17(b) of Registration Act. Hence the un registered sale agreement shall not be considered as a primary evidence perse without any substantial proof connecting to the said un registered sale agreement with the subsequent registered sale deed if any.

h) The Memo No.3204/LTR1/06 dated:19-07-2008 issued by the Government of Andhra Pradesh directs the authorities not to consider the unregistered sale deeds produced by non tribals in the Scheduled Area as an evidence during the enquiry under the provisions of LTR 1 of 59 as amended by 1 of 70 to check the exploitation of non tribals in land deals.

i) The Hon'ble Supreme Court of India in Civil No.3124, (Arising out of SLP (Civil) No.9305/2011), Delhi Development Authority Vs

Gaurav Kukreja held that the immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of General Power of Attorney sales" or "Sale Agreement etc. transfers" do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. "The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property "as per the said ruling of the Hon'ble Supreme Court.

j) Therefore the non-claimant/Revision Petitioner cannot claim any right over the land situated in the scheduled area by virtue of an unregistered sale agreement alone which is said to have been effected between the non tribals without any proof to the recitals in the said agreement. The claim on the said un registered sale agreement in 1969 alone is here by disallowed.

k) The full bench decision of the Hon'ble High Court in its case Vemana Somalamma Vs Deputy Collector, Tribal Welfare, Rampachodavaram (1993(1) ALT 409) held that "the object of the Regulations seem to be that all immovable property in agency tract as far as possible must be restored to Government or Tribals, as it was held by them at one time."

l) In exercise the powers conferred under section 6 of the Andhra Pradesh Scheduled Area Land Transfer Regulations 1 of 59 as amended by 1 of 70 the Revision Petition filed by the Petitioner is hereby dismissed. Therefore the impugned order Dated:02-03-2019, passed by the Additional Agent to Government in S.R.A. No.32/2017 is hereby upheld. As a sequel interim orders if any passed in the matter are hereby vacated. Revision Petition is disposed of accordingly.

8. Government after careful examination of the revision petition and the circumstances stated supra and in exercise of the powers conferred under section 6 of the Andhra Pradesh Scheduled Area Land Transfer Regulations 1 of 59 as amended by 1 of 70, the orders passed by the Appellate Authority Project Officer, ITDA, K.R.Puram, West Godavari District cum Additional Agent to Government in S.R.A.No.32/2017 dated:02-03-2019 conferring the orders of Special Deputy Collector(TW), West Godavari District passed in S.R.No.23/2015, dt.16.05.2017 are hereby upheld. Therefore the Revision Petition is hereby dismissed and Interim orders passed if any are hereby vacated in the matter.

9. The Collector & District Magistrate, West Godavari District, Eluru is requested to take necessary action in the matter accordingly and acknowledge the receipt of the case records, which are returned herewith.

10. This order shall be published in apegazette.cgg.gov.in

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

KANTILAL DANDE
SECRETARY TO GOVERNMENT (TW)

To
The Agent to Government & District Collector & Magistrate, Eluru, West Godavari District-534001.

The Additional Agent to Government cum Project Officer, ITDA, Kotaramachandrapuram, West Godavari District -534311.

The Special Deputy Collector (TW), K.R.Puram, West Godavari District.

Sri Alapati Pedda Somaraju S/o. Krishnamma, Kommugudem Village, H/o Laxmudugudem Gram Panchayat, Buttaigudem (M), West Godavari District-534448.

Smt Tellam Ganga W/o Sri Ramu R/o. Buddulavarigudem Village, H/o Saeethamppagudem Gram Panchayat, Buttaigudem(M) West Godavari District-534448

Copy to:
Sri P.R.K Amarendra Kumar, Advocate, F.No.313, Goodlife Homes, Beside Haailand, Chinna kakani, Guntur District.
The PS to Dy.CM(TW),
The PS to Secretary(TW)
The Director, Printing & Stationery (for Publication in the A.P Gazette)
Sf/Sc.

//FORWARDED : : BY ORDER//

M. Srinivasa Rao
SECTION OFFICER